

In the United States Court of Federal Claims

No. 12-429L

(Filed: June 14, 2016)

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THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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ORDER

Pending before the Court for final ruling are Plaintiff's motion to reopen expert discovery (Dkt. No. 81), and Defendant's motion to exclude the expert testimony of Darrell Schulte (Dkt. No. 87). These motions arise from Mr. Schulte's discovery of an error in his modeling of fire behavior relevant to this case. Plaintiff wishes simply to allow Mr. Schulte to correct his error, and to afford Defendant the opportunity to examine Mr. Schulte further in a deposition, as well as to update the reports of its own experts. Defendant asserts that Mr. Schulte should not be permitted to testify due to the resulting prejudice from correcting and adjusting expert positions so close to trial. The trial is scheduled to begin in Great Falls, Montana on August 16, 2016.

The Court has in place a May 26, 2016 provisional order providing that expert discovery will be reopened and extended until June 30, 2016 (Dkt. No. 86). This order required Mr. Schulte to disclose his supplemental report by June 1, 2016 (which he has done), and permitted other experts to make modifications to their reports if disclosed to opposing counsel before June 15, 2016. Supplemental depositions of any expert who modifies a report may be scheduled between June 15 and June 30, 2016. The Court instructed the parties to work to this schedule until the pending motions were fully briefed and decided.

Having now reviewed the parties' additional briefing, and considered the competing positions, the Court hereby makes the May 26, 2016 provisional order final. The Court GRANTS Plaintiff's motion to reopen expert discovery, and DENIES Defendant's motion

to exclude the expert testimony of Darrell Schulte. Trial will proceed as scheduled on August 16, 2016 in Great Falls, Montana.

IT IS SO ORDERED.

s/ Thomas C. Wheeler
THOMAS C. WHEELER
Judge